

AMENDED IN ASSEMBLY MAY 24, 1999

AMENDED IN ASSEMBLY APRIL 5, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1517

Introduced by Assembly Member Firebaugh

February 26, 1999

An act to add Section 19826 to the Business and Professions Code, and to add Section 319.1 to the Penal Code, relating to gambling.

LEGISLATIVE COUNSEL'S DIGEST

AB 1517, as amended, Firebaugh. Gambling: jackpot poker.

Existing law generally prohibits anyone, other than the California State Lottery, from contriving, preparing, setting up, proposing, or drawing any lottery, defined to be any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance of obtaining all or a portion of the property, with a violation of these and other related provisions punishable as a misdemeanor. The California Constitution provides that the Legislature has no power to authorize lotteries. Existing case law provides that the card game of jackpot poker is an unlawful lottery because the game is dominated by chance.

The Gambling Control Act provides for the establishment of the Gambling Control Commission, and provides that the

commission has jurisdiction over the operation of gambling establishments in this state.

This bill would *state findings and declarations of the Legislature, and would* provide that a jackpot, *player pool*, or progressive pool game played in a gambling establishment licensed by the commission is not unlawful if the game contains an element of skill. The bill would require the commission to adopt regulations ~~providing for~~ *as specified, relating to* the collection, accounting, and disbursal of all funds held for jackpot or progressive pool payouts. The bill would authorize a gambling establishment to deduct no more than 15% from the jackpot or pool for its administrative expenses, ~~and~~ would allow the local entity in which the establishment is located to claim up to 5% of the jackpot or pool as a licensing fee or for administrative costs *and would provide that after these deductions the remaining funds shall be irrevocably dedicated to augment or otherwise fund the winnings of players.* The bill would enact other related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares
2 that numerous California cities are dependent on
3 revenues from gambling establishments to support
4 essential municipal services. A number of cities receive in
5 excess of 40 percent of their general fund revenues from
6 fees collected from gambling establishments licensed
7 pursuant to the Gambling Control Act (Chapter 5
8 (commencing with Section 19800) of Division 8 of the
9 Business and Professions Code). The prohibition against
10 smoking in places of employment has caused the
11 revenues paid to municipalities by gambling
12 establishments to decline in some locations by as much as
13 12 percent. The continued loss of these revenues will
14 require the reduction of essential services in these
15 municipalities, including law enforcement, fire, and gang
16 prevention activities. Therefore, it is the intent of the
17 Legislature to clarify the law to restore the play of jackpot

1 poker, and to allow cities and counties to assess fees and
2 taxes on the funds placed in the jackpot poker pools
3 authorized by the California Gambling Control
4 Commission.

5 *(b) The Legislature finds and declares that Section 2*
6 *of this act is intended to clarify the law in light of the*
7 *decision of the Second District Court of Appeals in the*
8 *case of Bell Gardens Bicycle Club v. Department of*
9 *Justice (1995) 36 Cal.App.4th 717, and the decision of the*
10 *California Supreme Court in the case of Western Telcon,*
11 *Inc. v. California State Lottery (1996) 13 Cal.4th 475. In*
12 *the Bell Gardens case, the court determined that jackpot*
13 *poker was an illegal lottery because the dominant feature*
14 *in the play of jackpot poker is chance. In the Western*
15 *Telcon decision, the California Supreme Court, in*
16 *distinguishing between gaming, lotteries, and betting,*
17 *stated that lottery games and banking games are*
18 *exclusive of one another, and can surely be distinguished*
19 *by the nature of the betting itself. It is the intent of the*
20 *Legislature to authorize jackpot poker, and other player*
21 *pooled games, as banking games that are banked by*
22 *players, or by pools which are irrevocably dedicated to*
23 *the benefit of players.*

24 SEC. 2. Section 19826 is added to the Business and
25 Professions Code, to read:

26 19826. The commission shall adopt regulations
27 providing for the collection, accounting, and disbursal of
28 all funds held for jackpot or progressive pool payouts. The
29 gambling establishment may deduct no more than 15
30 percent from the jackpot or pool for its administrative
31 expenses. The city, county, or city and county in which
32 the gambling establishment is located may claim up to 5
33 percent of the jackpot or progressive pool as a licensing
34 fee or for administrative costs. *Funds remaining in the*
35 *jackpot or progressive pool after these two deductions*
36 *shall be irrevocably dedicated to augment or otherwise*
37 *fund the winnings of players.* The gambling
38 establishment shall record the name, address, and
39 driver's license or state identification card number for
40 each winner of a jackpot or progressive pool that exceeds

1 five thousand dollars (\$5,000). This information shall be
2 provided to the commission once each quarter. The
3 regulations adopted by the commission shall (a) require
4 a gambling establishment to use separate collection boxes
5 for jackpot or pool funds and for other funds, ~~and shall~~ (b)
6 require the collections in jackpot or pool funds to be
7 counted separately from the other funds, and (c) require
8 *the use and implementation of electronic accounting*
9 *devices at the gambling tables which will ensure the*
10 *integrity and accuracy of the accounting of funds in the*
11 *pool.*

12 SEC. 3. Section 319.1 is added to the Penal Code, to
13 read:

14 319.1. Notwithstanding any other provision of this
15 chapter, it is not unlawful for a jackpot, *player pool*, or
16 progressive pool game to be played with cards consistent
17 with regulations adopted pursuant to Section 19826 of the
18 Business and Professions Code, in a gambling
19 establishment that is licensed by the California Gambling
20 Control Commission pursuant to the Gambling Control
21 Act (Chapter 5 (commencing with Section 19800) of
22 Division 8 of the Business and Professions Code), if the
23 game contains an element of skill.

